

A G R E E M E N T

PROJECT NO. F-77-2(1021), STATE CONTROL NO. 11395
CITY OF LINCOLN
STATE OF NEBRASKA, DEPARTMENT OF ROADS
HIGHWAY US-77 - CAPITOL PARKWAY WEST INTERCHANGE

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, by and between the City of Lincoln, a municipal corporation of the State of Nebraska, hereinafter referred to as the "City," and the State of Nebraska, Department of Roads, hereinafter referred to as the "State."

WITNESSETH:

WHEREAS, it is the desire of the parties that a portion of Highway US-77 in Lincoln be improved at the location as shown in Exhibit "A" attached, which is hereby made a part of this agreement, and

WHEREAS, said improvement is located within the designated urban area of Lincoln, Nebraska, and funds administered by the State, hereinafter known as "State Funds," have been made available for the construction of improvements such as this, and

WHEREAS, Federal Regulations provide that the City shall not profit or otherwise gain from local property assessments that exceed the City's share of project costs, and

WHEREAS, it is the desire of the City that said project be constructed under the designation of Project No. F-77-2(1021), as evidenced by Resolution No. ____ of the the City of Lincoln dated the ____ day of _____, 20____, attached hereto, identified as Exhibit "C," and hereby made a part of this Agreement, and

WHEREAS, the description of the project is as follows:

Improve the Highway US-77 interchange with Capitol Parkway West in Lincoln by constructing an overpass, access ramps, approaches, utility relocations and roadway lighting.

NOW THEREFORE, in consideration of these facts and the mutual promises of the parties hereto, it is hereby agreed that the construction or reconstruction of the aforesaid highway between construction limits described in Exhibit "A" attached hereto, denoting Project No. F-77-2(1021), shall be accomplished according to and in the manner provided by plans and specifications to be prepared by the State, which are to be, by this reference, made a part of this agreement.

And the parties agree further as follows:

SECTION 1. The City agrees:

- (a) To pass and enforce an ordinance as required to effect the following restrictions within the project limits: No Parking
- (b) To prohibit filling stations, service stations or other business establishments being located in such a way that vehicles being served will be required to stand on said public highway right of way.
- (c) To require that all future entrances from private property to the public right of way within the limits of this project receive prior approval of the Director or his authorized representative.
- (d) To clear, at no cost to the State, the present right of way of this project of all advertising signs. The City also agrees, at no cost to the State, to clear any other privately owned facility or thing that may interfere with the construction, maintenance and operation of the improvement planned in this project, and to keep the old and new right of way free of future encroachments, except those authorized by permit from the City and approved by the State and Federal Highway Administration.
- (e) If the City performs any part of the work on this project itself, the City agrees to abide by the provisions of the Nebraska Fair Employment Practices Act as provided by Neb.Rev.Stat. §48-1101 through 48-1126 (Reissue 1998), and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27 as set forth in Exhibit "B" attached hereto and hereby made a part of this agreement. The reference to "Contractor" in this exhibit shall mean the "City."
- (f) **DISADVANTAGED BUSINESS ENTERPRISES**
 - (1) **Policy**

The City and State further agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the disadvantaged business requirements of 49 CFR Part 26 are hereby made a part of and incorporated by this reference into this agreement.
 - (2) **Disadvantaged Business Enterprises Obligation**

The City and State further agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity

to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, the City shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of FHWA assisted contracts.

The City acting as a subrecipient of Federal-aid funds on this project agrees to adopt the disadvantaged business enterprise program of the State for the Federal-aid contracts the City enters into on this project.

On any work performed by the City, failure of the City to carry out the requirements set forth above shall constitute breach of contract and, after the notification of the FHWA, may result in termination of the agreement or contract by the State or such remedy as the State deems appropriate.

- (g) Any changes in the roadway geometrics, either during project construction or after the project is completed, including but not limited to access control, driveways, median breaks, parking restrictions or any other traffic control items shall require prior approval of the State with Federal Highway Administration concurrence.
- (h) To provide, where the proposed construction involves a change in the grades established by City ordinance, that an amendment to said ordinance be passed, reestablishing said grades as shown in the plans without cost to the State.

SECTION 2. It is agreed and understood by the parties hereto that Federal-Aid Policy Guide, 23 CFR 645A, "Utility Relocations, Adjustments and Reimbursement", and Federal-Aid Policy Guide, 23 CFR 645B, "Accommodation of Utilities" issued by the U.S. Department of Transportation, Federal Highway Administration, as supplemented, revised or updated heretofore, is hereby expressly made a part of and incorporated into this agreement by this reference. By signing this agreement, the City agrees to adopt, on the improvement contemplated in this agreement the Nebraska Department of Roads' Policy for Accommodating Utilities on State Highway Right of Way issued by the State August, 1998, and its subsequent revisions or additions.

The City further agrees:

- (a) To comply with Neb.Rev.Stat. §39-1361 (Reissue 1998), and the rules and regulations of the Department of Roads before making or allowing to be made, any utility excavation, pavement cuts or performing other activity upon said highway, and shall be responsible to see that all such work is performed according to the rules and regulations of, and by authority of a permit granted by the Department of Roads of the State of Nebraska.
- (b) To furnish or cause to be furnished all of the labor, tools, equipment and materials for the rehabilitation of its municipally owned utilities as made necessary by the construction of this project.
- (c) To prepare and submit to the State upon receipt of preliminary construction plans for this project a plan and estimate detailing anticipated location and nonbetterment costs for the rehabilitation of all municipally owned utilities as made necessary by this project. It is mutually understood that all nonbetterment municipal utility rehabilitation costs within the corporate limits of the City will become a project cost, but that outside said City limits only the nonbetterment portion of the rehabilitation costs of facilities currently occupying private right of way will be reimbursed. The cost of nonbetterment rehabilitation of municipally owned and operated utilities within the corporate limits is currently unknown. Should this project necessitate the nonbetterment rehabilitation of any municipally owned and operated utilities, the parties hereto agree to enter into a supplemental agreement to provide for the construction of the nonbetterment utilities and the reimbursement to the City for the State's share of the costs of the rehabilitation of municipally owned and operated utilities. Said supplemental agreement shall be entered into prior to utility work beginning.
- (d) To pay the State within thirty days after receipt of a billing from the State, the City's share of the project costs. The City's share shall be 20 percent of the actual cost of preliminary engineering, right-of-way, utilities, construction and construction engineering of this project. The project's currently estimated cost is \$10,000,000, with the City's share being \$2,000,000, however, both parties recognize this is a preliminary estimate only and that the final costs may well be higher or lower than this preliminary estimate. On October 1, 2005, the State will bill for 20 percent of preliminary engineering, right-of-way and utility costs incurred by the State for this project. When the work is completed, and all costs

accumulated, the State will prepare and submit a final statement to the City showing the refund due to or additional payment due from the City.

SECTION 3. The Federal share of this project shall be reduced by any project specific local property assessments that exceed the appropriate local share on this project. This is subject to State review.

SECTION 4. All traffic control devices will conform to the latest approved edition of the Manual on Uniform Traffic Control Devices. If the City is to perform or contract for any work, they will develop a traffic control plan. The plan will be provided to the State's Project Manager for approval and acceptance. It will be the City's responsibility for the operation and maintenance of the approved traffic control plan.

SECTION 5. The City agrees that it will, without any cost to the State, provide and pay for the electrical energy for all of the luminaires of the roadway lighting system which may be constructed as a part of this project, including the electrical energy which may be required during the construction period of the project for lamp stabilization, luminaire adjustment, and system testing. Electrical energy shall be provided for dusk to dawn lighting, and the lighting level shall be uniform and constant through the hours of darkness. The City shall not knowingly permit any of the luminaires to remain inoperative for any unreasonable length of time. The City shall also provide all required maintenance for the said lighting system at no expense to the State. Such required maintenance will include but not be limited to the repair or replacement of all defective and burned out lamps as may be discovered or reported or as may be revealed by at least monthly routine maintenance patrols, the routine cleaning of luminaires annually and also for repair or replacement of any part of the roadway lighting system which might be necessary as a result of material deterioration or mechanical or electrical failure. In the event any part of the lighting system is damaged, the City will be responsible for furnishing replacements for any equipment which is so damaged and will furnish all labor and other material necessary and will complete the repairs at no cost to the State. It is further understood that the City shall be entitled to all damages collected from any wrongdoer who may have put the City to the expense of having to repair the damaged lighting installation.

SECTION 6. The State hereby grants to the City a permit to use State highway right of way in the vicinity in which such roadway lighting will be constructed, for ingress and egress for the purpose of operating and maintaining the said roadway lighting in accordance with this agreement. The City further agrees to comply with all traffic safety regulations, including those prescribed in the latest approved edition of the Manual of Uniform Traffic Control Devices and

to use extreme caution when working in the State right of way and not block or encroach upon any traffic lane without first providing a flagperson to direct traffic.

SECTION 7. The City agrees to provide electrical power for the traffic control signal system at its own expense. The City further agrees at its own expense to maintain, operate and keep in good repair the entire signal system with the exception of the equipment within the controller cabinet which the State hereby agrees to maintain at its cost and at no cost to the City. In the event any part or parts other than the controller or detector mechanism of the signal system are damaged by causes other than normal wear and tear, the City agrees to repair such damage furnishing all labor and replacement parts or materials necessary to restore these said installations at the sole expense of the City and without any expense to the State. The City agrees that any repair or replacement parts furnished by the City in the maintenance of the signal system shall comply with State specifications and standards. It is further understood that the City shall be entitled to those damages collected from any wrongdoer for the expense involved in repairing that portion of the signal installation maintained by the City. The ~~State~~ ^{CITY} shall have jurisdiction in determining and controlling the cycle length, the interval length, sequence, and the hours and manner of the signal operation, as provided by Neb.Rev.Stat. §39-610 (Reissue 1988).

SECTION 8. It is hereby agreed that plans and specifications for the above mentioned project will be on file in the office of the Department of Roads, Lincoln, Nebraska.

SECTION 9. The City and State will fully cooperate to cause the removal from public right of way, or correction or alteration in the public right of way, as necessary for the construction of the aforesaid project, of all pipe lines, poles or other underground or overhead services not owned by the City.

SECTION 10. The City agrees to participate toward the cost, as stated in Section 2, paragraph "d" of this agreement on that portion of the aforesaid project which was within the corporate limits of the City as they exist on the date that this Agreement is executed by the State.

SECTION 11. The State hereby agrees:

- (a) To prepare and convey to the City, prior to construction, plans for the proposed subject project.
- (b) To advertise and conduct a letting and receive bids on the contemplated improvement. The City agrees that the State will award the contract to the lowest responsible bidder and that said contract shall be signed only by the State.

- (c) To supervise and cause completion of the construction of the improvement as shown in the plans.
- (d) To acquire all additional right of way and do all things, in pursuance of the aforesaid project, not specifically assumed by the City.
- (e) To reimburse the City for the nonbetterment rehabilitation of municipally owned utility facilities as provided in Section 2(c).
- (f) To construct that portion of the project located outside the City limits without cost to the City, except as provided in Section 2(c).
- (g) To design traffic signal at U.S. Hwy. 77 and Capital Parkway West.
- (h) To design as a part of this project a lighting system which meets present-day lighting standards.

SECTION 12. The parties hereto agree that the State shall make sole determination as to the scheduling of the construction for this project.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated.

EXECUTED by the City this ____ day of _____, 20__.

ATTEST:

CITY OF LINCOLN

Clerk

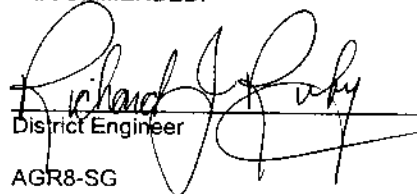
Mayor

EXECUTED by the State this ____ day of _____, 20__.

STATE OF NEBRASKA
DEPARTMENT OF ROADS

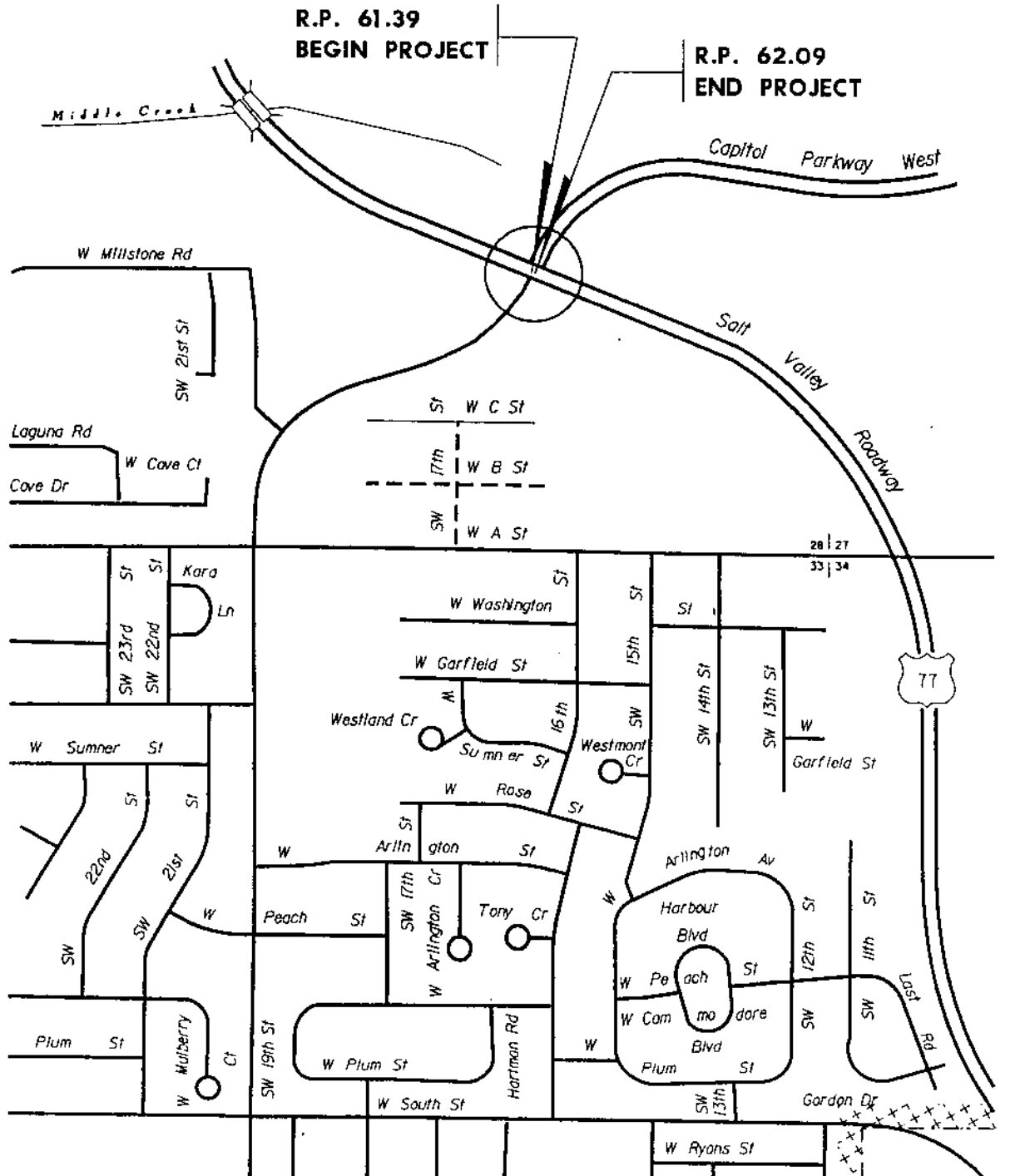
Roadway Design Engineer

RECOMMENDED:



District Engineer
AGR8-SG

LANCASTER COUNTY
NEBRASKA



77-2(1021)
C.N. 11395

EXHIBIT "A"

NONDISCRIMINATION CLAUSES

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

- (1) Compliance with Regulations: The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Parts 21 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the basis of disability, race, color, sex, religion or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix "A," "B," and "C" of Part 21 of the Regulations.
- (3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the basis of disability, race, color, sex, religion or national origin.
- (4) Information and Reports: The contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State Highway Department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State Highway Department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State Highway Department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to,
 - (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (6) Incorporation of Provisions: The contractor will include the provisions of paragraph (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract or procurement as the State Highway Department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State to enter into such litigation to protect the interests of the State, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.